



OFFICE OF THE DEPUTY COMMISSIONER - LEGAL MATTERS

LEGAL BUREAU BULLETIN

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- I. SUBJECT:** THE PAYTON RULE: ARRESTING A SUSPECT IN HIS HOME WITHOUT AN ARREST WARRANT
- II. QUESTION:** MAY OFFICERS ARREST AN INDIVIDUAL IN HIS HOME WITHOUT FIRST SECURING AN ARREST WARRANT?
- III. ANSWER:** NO. OFFICERS MAY NOT ARREST AN INDIVIDUAL IN HIS HOME WITHOUT AN ARREST WARRANT. MAKING WARRANTLESS ARREST IN THESE CIRCUMSTANCES IS A VIOLATION OF THE PAYTON RULE.
- IV. DISCUSSION:**

A. WHY IS THE LEGAL BUREAU ISSUING THIS BULLETIN?

This Legal Bureau Bulletin summarizes the law governing arrests in a suspect's home where officers do not have an arrest warrant. Note that the principles described below are not new. Rather, the purpose of this Bulletin is to provide a review of established New York law governing warrantless in-home arrests.

B. INTRODUCTION

It is well-settled law in New York that a suspect cannot be arrested in his home unless the police have an arrest warrant. This rule, known as the Payton rule, applies *even if* the police have probable cause to make an arrest.¹

i. In What Types of Locations Does the Payton Rule Apply?

The Payton rule applies in areas that would legally be considered the home of the perpetrator whom officers have probable cause to arrest. The rule applies in a suspect's own

¹ Officers may arrest a suspect in his home without an arrest warrant where an exception to the Payton rule applies. These exceptions will be discussed in a subsequent Legal Bureau Bulletin.

home or apartment. The courts have also held that an individual has a reasonable expectation of privacy in a hotel or motel that he occupies equivalent to that which he would have in his home.

ii. In Which Areas Within These Locations Does the Payton Rule Apply?

Even though a location may be considered a suspect's home under the Payton rule, certain areas within those locations are not protected by Payton. The areas in which officers may make warrantless arrests are described below.

1. Hallways, Lobbies, and Other Common Areas

Whether the Payton rule applies to hallways, lobbies, and other common areas of buildings depends on whether that particular area would be considered part of a home that would receive Fourth Amendment protection. Whether a particular area is part of the individual's home turns on whether that individual has a reasonable expectation of privacy in the area in which an officer seeks to make an arrest. Assessing whether an individual has a reasonable expectation of privacy in a particular area most often requires an analysis of the specific facts of a case. However, New York courts have announced bright-line rules as to when Payton applies and does not apply in the following scenarios:

- The Payton rule **does not apply** in lobbies, hallways, stairways, or other common areas of large multiple dwellings. The courts have reasoned that individuals have a limited expectation of privacy in these areas because access to them is relatively uncontrolled in that they are accessible by strangers and the public.
- The Payton rule **does apply** in lobbies, hallways, stairways, and other common areas in smaller dwellings, such as a two-family house where access to common areas is limited to residents and their guests.

Determining whether Payton applies outside of these clearly defined scenarios depends on the circumstances. In these less clear scenarios, it is important for officers to keep in mind that the sharing of common areas between unrelated occupants, such as in a "group home" or a "rooming house," does not always relinquish an individual's expectation of privacy in those common areas. In other words, the fact that an area, such as a hallway, may be open to residents who otherwise live separately does not necessarily mean that the area is open to police who seek to make a warrantless arrest. Because the fact that a given location is a "multi-tenant dwelling" does not in itself dictate what privacy interests exist in the common areas, the courts have provided the following factors, which officers may consider in assessing the privacy interests in a location:

- The residents' use of the common areas, such as whether they are used purely for recreational activities or for essential living purposes, such as eating or bathing.
- The residents' relationships to one another.
- Whether access is limited to residents or is open to the public.

2. Doorways

Although an individual has a reasonable expectation of privacy in his home, his Fourth Amendment protection ends when he reaches the doorway of his home. Therefore, an officer does not violate Payton when he makes a warrantless arrest of an individual who is standing at the threshold of the door to his home. Although officers may arrest a suspect at the threshold of the door, the officers may not enter the suspect's home, even by a few feet, to make a warrantless arrest. Further, the fact that officers can see the suspect from an open doorway does not mean that officers may enter the home to make a warrantless arrest. The suspect must actually be standing at the entryway in order to make an arrest.

If the suspect steps outside his home, however, he can be arrested without a warrant. Additionally, if a suspect exits his home, and upon notice by the police that he is under arrest flees back into his home, he can be pursued by the police into his home pursuant to the law of hot pursuit.

3. Backyards

Officers may arrest an individual in his backyard without an arrest warrant. Courts considering this scenario have explained that once an individual exits his home, he no longer has a legitimate expectation of privacy. Therefore, a warrantless arrest in a suspect's backyard would not violate the Payton rule.

4. Driveways

Officers may arrest an individual in his driveway without an arrest warrant. Courts have repeatedly held that an individual does not have a reasonable expectation of privacy in an area which is open to visitors to the residence. Accordingly, a warrantless arrest in a suspect's driveway would not violate the Payton rule.

iii. Getting a Suspect to Exit His Home to Make an Arrest Without an Arrest Warrant

Because Payton permits warrantless arrests outside of the home, law enforcement officials may ask, but not order, a suspect leave his home, and if the suspect obeys, may thereafter make an arrest. Officers may only attempt to get a suspect to leave his home through *non-coercive* means. Courts consider non-coercive means to be methods where a suspect is making a voluntary choice to leave his home and is not leaving simply because he believes that he has no choice in the matter. As such, ordering a suspect out of his home is a violation of Payton. On the other hand, trying to get a suspect to leave his home voluntarily is acceptable.

In certain circumstances, officers may use a ruse or deception to get a suspect to exit his home. However, officers may only use *non-coercive* means to get a suspect to leave his home.

Below are deceptive means that the courts have considered non-coercive and therefore consistent with Payton:

- Where an officer tells a suspect to come outside his home because his car has been involved in an accident.
- Where an officer tells a suspect to come outside because his car has a flat tire.
- Where an officer asks a suspect to come outside and discuss a domestic dispute involving two of his relatives.
- Where an officer knocks on a suspect's door and tells the suspect that she might want to go out with him.

In all of the examples listed above, the suspect is provided with a voluntary choice of whether or not to leave his home. Conversely, below are means to get a suspect to exit his home in which the suspect is not provided with a voluntary choice. The courts have considered these means to be coercive, and therefore in violation of Payton:

- Getting a suspect to leave his home through the use of a false claim of authority, such as by posing as parole officers conducting a residence check with which a suspect is legally obligated to comply under the terms of his parole.
- Feigning exigent circumstances in order to get a suspect to leave his home, such as by telling the suspect there is a gas leak in his home.

If officers are considering whether to employ means of deception that are not described above, they should consider whether the means are coercive. Unless the method to be used causes a suspect to leave his home voluntarily, officers should not resort to those means so as to avoid violating the Payton rule.

C. CONCLUSION

The penalty for a violation of the Payton rule by law enforcement is the suppression of evidence obtained as a result of the violation. In order to avoid the exclusion of valuable evidence in the prosecution of a suspect for whom the police have probable cause to arrest, officers should ensure that they comply with the law as stated in this bulletin.